

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



March 30, 2021

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg:

On behalf of the Navajo Nation (Nation), we are pleased to share with you and your team the enclosed Transportation White Paper, *Diné Atiin Bahane: Navajo Road Emergence*. In this White Paper, we provide an overview of our transportation system and the unique successes and challenges we encounter. We also offer seven requests and seven corresponding solutions for the Federal government to consider so we can work together to enhance our transportation system.

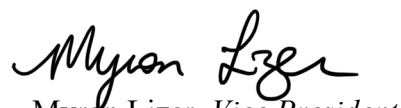
We appreciate the CARES Act funds and now the anticipated American Rescue Plan Act funding for tribes. There were many lessons learned from the CARES Act funding, including many challenges that were magnified by the federal requirements and timeline. Due to the challenges and setbacks that we experienced, our team felt the need to highlight the policies and regulations that delay efforts to mitigate and recover from the COVID-19 in Indian Country.

The Navajo Nation is the largest land-based American Indian tribe in the country encompassing over 27,000 square miles that spans Arizona, New Mexico, and Utah with nearly 350,000 citizens, half of whom reside on the Navajo Nation. As such, transportation is an integral part of our lives. The Nation desires a safe and efficient transportation system that supports our way of life, encourages economic development, supports the delivery of public and emergency services, develops our lands and resources, and enhances the Nation's ability to be self-sufficient. Currently, there are 14,167 miles of roadway across the Nation that includes 9,400 earthen miles, 1,700 paved highway miles, 179 bridges, and five airports. Over 88% of our road system is unimproved. We need Federal partnerships to help us overcome common pitfalls, and to develop fair and commonsense policies.

We appreciate your continued interest in helping elevate issues impacting Native Americans to honor our treaties and inherent sovereignty. Should you require additional information or need to contact our office, please reach out to Santee Lewis, Executive Director, Navajo Nation Washington Office, slewis@nnwo.org or (202) 981-4331. Thank you.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025



***Diné Atiin Bahane:* Navajo Road Emergence**

A Navajo Nation Transportation White Paper

March 2021



Diné Atiin Bahane: Navajo Road Emergence

When a road is built on the Navajo Nation it is blessed by a Medicine Man and celebrated by the community. We sing Atiin Biyiin (a Diné road song) to bless the road so that it will provide for the welfare of the Diné people, or Hózhó. Atiin is our path and life's journey. May the blessings from these songs extend to our neighbors and all who traverse our roads – for a safe commute and life's journey.

Authored by:

The Navajo Nation Washington Office

Contributing Offices, Divisions, and Agencies:

Navajo Nation Office of the President and Vice President

Navajo Nation Washington Office

Navajo Nation Division of Transportation

Navajo Nation Environmental Protection Agency

Navajo Nation Division of Economic Development

Navajo Nation Division of Community Development

Navajo Nation Division of Natural Resources

Navajo-Hopi Land Commission Office

Special Acknowledgments to:

The Navajo Nation Council

TABLE OF CONTENTS

| | |
|--------------------------------------------------------------|-----------|
| EXECUTIVE SUMMARY | 1 |
| Navajo Nation Overview | 3 |
| Transportation System | 8 |
| Transportation Successes | 9 |
| Transportation Challenges | 12 |
| Transportation Requests with Proposed Solutions | 23 |
| CONCLUSION | 28 |

EXECUTIVE SUMMARY

The *Diné* travel many roads. The first road we took was our emergence into this world. There are also the physical roads we travel daily to go to school, work, or to reach loved ones. As a Nation, the road we are now traveling will lead us out of the COVID-19 pandemic to economic recovery. For us, all roads will lead us toward self-determination, self-reliance, and self-sufficiency.

The stakes have never been higher as the Navajo Nation pivots away from an economy heavily reliant on extractive resources to a sustainable economy that maximizes the talent, skills, and education of our most valuable asset: the Navajo People.

The Navajo Nation is the largest American Indian tribe in the United States, with nearly 320,000 members whose ability to get to school, jobs, health care, or any place is compromised daily by a 14,167-mile road system that is 88% unimproved and where maintenance is a challenge due to Federal oversight that discourages us from doing what we know needs to be done. This is further compounded by chronic underfunding of roads on Indian tribal lands and funding formulas that subsidize county and state roads with tribal transportation funds. Our [Navajo Nation Division of Transportation](#) (NDOT) that oversees our road system is far too familiar with these pitfalls.

The Navajo Nation is further compromised when we navigate the myriad Federal processes to adhere to various Federal laws such as the Clean Water Act of 1972. For example, the Navajo Nation is still subject to Secretarial oversight despite the creation of our Navajo Nation Environmental Protection Agency (NNEPA) and laws (e.g. [Navajo Nation Environmental Policy Act](#)) to regulate and protect our citizens and our environment. Since the 1990s, NNEPA departments and programs have earned Treatment as a State status for delegated Federal programs and notwithstanding our demonstrated leadership and technical expertise on the Navajo Nation, we are still subject to Secretarial oversight whenever we dig a hole or add gravel to a road.

While Secretarial oversight is appropriate for small villages or direct service tribes which lack the capacity to govern themselves, it should not apply to the Navajo Nation and the numerous other tribes similarly situated. The Navajo Nation has the capacity to administer transportation programs, fulfill our self-governance agreement with the U.S. Department of Transportation, and operate like any state department of transportation. We need fair and commonsense policies that honor our treaties and inherent sovereignty. We want Federal partnerships whose terms are commensurate with a government-to-government relationship.

In this white paper, the Navajo Nation provides an overview of our transportation system and the unique successes and challenges we encounter. This paper also presents seven requests for Federal Agencies, the White House, and other US Government offices which are:

One: Resolve conflicts in agency authority and jurisdictions in order to protect our people, the environment, and indigenous cultural resources.

Two: Harmonize Agency Guidance with Federal Law to make Diné roads safe.

Three: Provide flexibility to the Tribal Priority Allocations (TPA) that the BIA uses for road maintenance so that TPA funds may also be used to fund tribal roads.

Four: Ensure agency practices are consistent with policies to make the Navajo road system equitable.

Five: Protect the integrity of tribal road funds so that they do not subsidize non-tribal roads.

Six: Recognize that tribal bridges and roads present different exigencies of circumstance that require complimentary, not competitive funding sources.

Seven: Promote tribal sovereignty by retroceding Secretarial approval over tribes who have demonstrated their own capacity for Federal regulatory compliance.

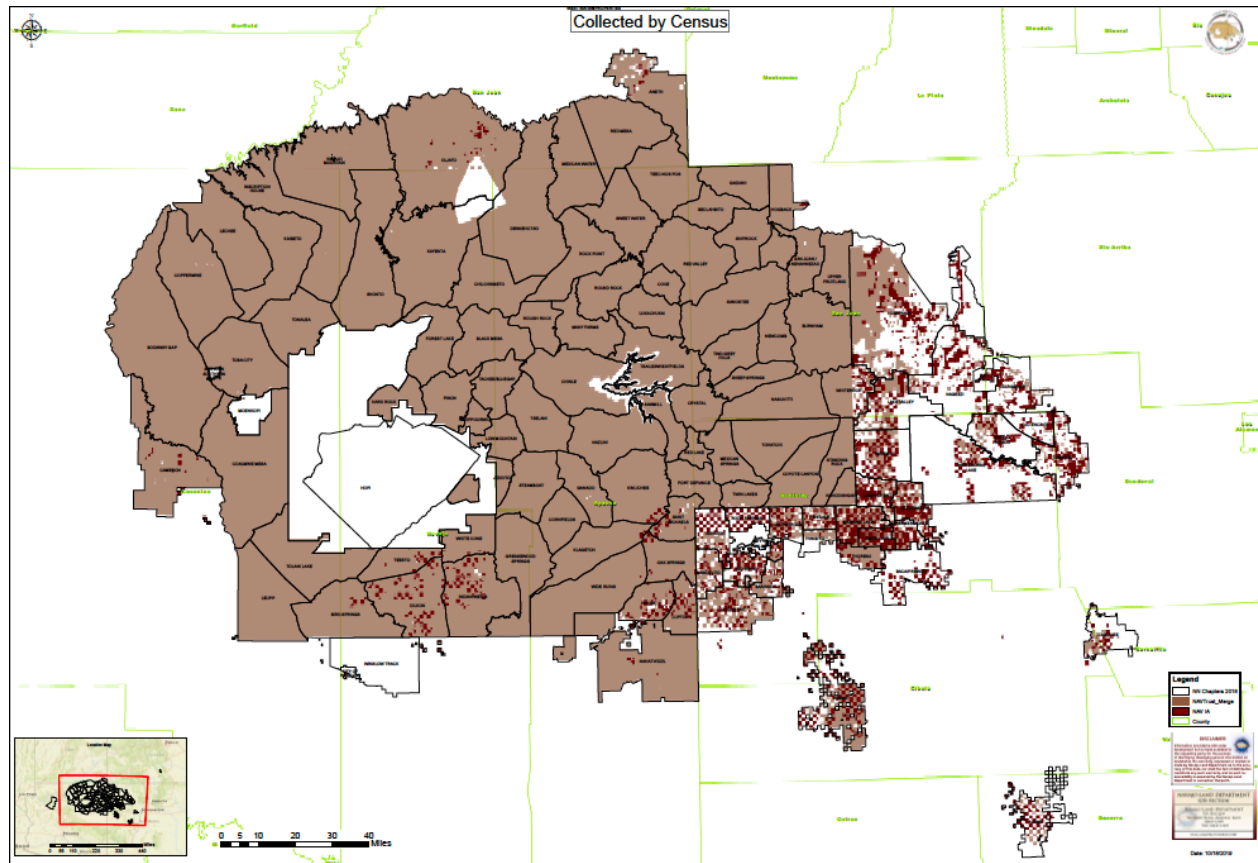
Below we provide a narrative with suggestions on how to honor these requests. We need our Federal partners to support, not supplant, our decision-making authority for our people on our land.

The interstate highway system spanning the entire United States was monumental and is acknowledged as the “Greatest Public Works Project in History”¹. Without the vision of President Dwight D. Eisenhower, who signed the [Federal-Aid Highway Act of 1956](#), our transportation capacity might not be what it is today. Transportation is an integral part of our lives. Similarly, the Navajo Nation desires a safe and efficient transportation system that supports our way of life, encourages economic development, supports the delivery of public and emergency services, develops our lands and resources, and enhances the Navajo Nation’s ability to be self-sufficient. Essentially, the Navajo Nation looks to the day when we have a transportation system that provides the same opportunities the Federal-Aid Highway Act provides all Americans.

We look forward to working with this Administration and Congress to move tribal transportation policy forward for the Navajo Nation.

Navajo Nation Overview

The Navajo Nation (Nation), known as *Diné*, is the largest American Indian Tribe in the United States, with approximately 320,000 tribal members who reside on a land mass of over 27,000 square miles. *Dinétaah* (the land of the *Diné*) spans the states of Arizona, New Mexico, and Utah in the Southwest. If the Navajo Nation was a state, it would rank 41st in size, behind South Carolina and just before West Virginia.²



The *Diné* have traditionally been sheep ranchers and are celebrated for being master weavers, artists, jewelers, and silversmiths whose work is highly prized and displayed in museums, shops and private collections around the world. But the Navajo Nation is also home to nationally renowned *Diné* doctors, engineers, lawyers, biologists, educators, athletes, and entertainers. We are proud of our environmental scientists who are leading the effort to clean up over 500 uranium mines that the United States abandoned after halting its atomic stampede across Navajo land³.

Notably, the Navajo Nation is home to warriors who famously served as Navajo Code Talkers, creating an unbreakable code that helped defeat the Axis powers during World War II. Our Navajo Code Talkers are truly honored and celebrated each August 14th in recognition of Navajo Code Talkers Day⁴ to acknowledge their patriotism and remarkable efforts. Today, American Indians including Navajos serve in the armed forces at a higher rate than any demographic⁵.



Navajo Code Talkers, circa 1943. *Source: www.cnn.com*

Dinétah is so beautiful that its red rock spires and rainbow deserts have become the iconic landscape of the American West. Annually, the Nation attracts an average of two million visitors from around the world, including travelers from Europe and Asia. In many instances, the Navajo Nation is their first exposure to Indian Country and American Indian people.



US Highway 163 through Monument Valley, Utah along the northern lands of the Navajo Nation.

Source: www.sunilshinde.typepad.com

Diné families, friends, partners, and guests rely upon the transportation system to connect the sprawling southwest and to access the following facilities across *Dinétah*:

- Schools: 66 elementary and secondary schools and 2 post-secondary colleges
- Health care facilities: 6 hospitals, 1 cancer center, 7 health centers, and 15 health stations
- Tribal government facilities: 1,139
- Chapter Houses (local government community facilities): 110
- National Parks and Monuments: 5
- Tribal Parks: 12
- Airport: 1
- Airstrip: 5
- Fair grounds: 3
- Museums: 6
- Trading Posts: 10
- Shopping Centers: 9
- Grocery Stores: 13
- Small Businesses: 652
- Artisan Businesses: 1,796
- Post Offices: 26
- Banks: 5
- Hotels: 12
- Casinos: 4
- Churches: 375
- Agri-business: 14,500 farms
- Energy production facilities:
 - Solar: 2 tribally owned large-scale solar generating farms
 - Wind: 1 tribally owned megawatt facility
 - Natural gas: 6 companies operate
 - Oil: 5 companies operate
 - Methane conversion: 2 companies operate
 - Helium wells: 2 companies operate

In 2018 we convened over 70 community meetings to identify the priorities of the Navajo Nation and worked collaboratively to create solutions and positive change for our people. Together we created the [*Hozhó Diné Bi Nahat'á*](#), a strategic plan for improving Navajo governance to achieve peace, balance, beauty and harmony. Our *Nahat'á* Plan was developed as our roadmap to a better and more sustainable future.

The core focus areas of the *Nahat'á* Plan include health care, housing, economic development, education, and public safety. The predicate for all these guiding lights' ability to shine is the same for improving every aspect of Navajo life: building a better Navajo transportation system.



- **Herd of sheep on the Navajo Nation.** Source: www.indianz.com, Larry Lamsa

Navajo Nation Division of Economic Development

The [Navajo Nation Division of Economic Development](#) (NNDED) is one of 14 offices and Divisions within the [Executive Branch of the Navajo Nation Government](#). Its main purpose is to create an environment conducive to promoting and developing the commercial, tourism, industrial, small business, and other sectors to create jobs and business opportunities for tribal and non-tribal members alike. NNDED is helping us pivot away from an economy that for generations has largely been based upon extractive energy production and move into a self-sustaining economy that maximizes the talent, skills, and education of our most valuable asset: our own *Diné* People.

Navajo Nation Environmental Protection Agency

In the nearly 75 years since the Navajo Nation passed a resolution granting the Bureau of Indian Affairs right of way to our most travelled roadways, the Navajo Nation has developed its own administrative regulatory agency. In 1995, the Navajo Nation Tribal Council approved legislation for the Navajo Nation Environmental Protection Agency (NNEPA) to become the regulatory body charged with “protection of human health and the environment,” and, in the same legislation, adopted of the Navajo Nation Environmental Policy Act that provides guidance for the protection of air, water, and land resources and giving formal recognition that a clean environment contributes to maintaining harmony and balance on the Navajo Nation.

Since the 1990s, the departments and programs within the NNEPA have worked diligently to seek authorities which enhanced additional responsibilities to protect the air, water, and land resources of the Navajo Nation. The following represents a series of monumental progress by our NNEPA:

- Treatment as a State by the Public Water Systems Supervision Program for Safe Drinking Water Act, August 1991
- Attained Section 106 Treatment as a State for the Clean Water Act, June 1993
- Attained Treatment as a State for the Safe Drinking Water Act by UIC, September 1994

- Attained Section 319 Treatment as a State by the Clean Water Act, October 1999
- Attained Primacy by the Public Water System Supervision Program, December 2000
- Attained Title V Permitting for the Clean Air Act, October 2004
- Attained Sub Section 303/401 Treatment as State for the Clean Water Act, January 2006
- Attained Class II Primacy for Safe Drinking Water Act by UIC, October, 2008
- Approval for development of Uranium Policy Commission, 2015

Today NNEPA continues to work even harder to get Treatment as State for more programs, administer those programs for which NNEPA has been delegated Federal credentials, and develop our own environmental laws to further protect our natural resources.

While we feel that while Secretarial oversight may be appropriate for a 50-member village or a direct-service tribe that lacks the capacity to govern itself, it should not apply to the Navajo Nation and the dozens of other tribal nations who are similarly situated by having spent the last 50 years developing self-governance and self-sufficiency. The Navajo Nation Division of Transportation (NDOT) has the capacity to administer transportation programs, fulfill our self-governance agreement with the U.S. Dept. of Transportation, and operate like a state-managed department of transportation.



NDOT road crews applying dust control measures to fill material prior to placement.

Source: NDOT Facebook homepage

Transportation System

In total, there are currently 14,167 miles of roadway within the Navajo Nation. This includes nearly 9,400 miles of earthen roads, 1,700 miles of paved highways, approximately 179 bridges and five airports.

Navajo roads connect our communities. There are 110 chapters located within five agencies, or jurisdictions, created by the Bureau of Indian Affairs (BIA). Our roads are the critical thoroughfare for school buses, public safety services, emergency responders, and access to governmental services.

In terms of ownership, the Navajo Region Bureau of Indian Affairs (BIA) owns 42% of the roads. The Navajo Nation owns 34%, the State of Arizona owns 12%, and the respective counties own 12%.

Only 15% of the roads maintained by the Navajo Nation and the BIA are paved or graveled. The remaining 85% of the roads are dirt or earthen.

There are 1,316 miles designated regional routes that are earthen or gravel roads. These routes are bladed and maintained four to six times each year by the NDOT through its Federal Highway Administration (FHWA) annual allocation of funds. With 8,068 miles maintained on an as-needed basis or sporadically by the BIA and NDOT, the Navajo Nation, through its Fuel Excise Tax (FET) Program, supplements the costs of road maintenance and improvement. Taxes collected through the FET Program from gas and diesel fuel sales are used primarily for maintenance and road improvements such as the installation of drainage culvert(s), gravel lay down, soil stabilizer, double chip seal, concrete low water crossing, etc.



Aerial view of engineered roundabout at US Highway 191 and Route 264 intersection west of Ganado, AZ.

Source: Google Earth

Transportation Successes

In 2017, NDOT began implementing the Navajo Nation's direct funding agreement with FHWA, finishing four major road projects within the past three years and currently five others in various forms of progress, while enhancing NDOT's human resources, equipment, accountability, and responsibility.

We are making every effort to reduce serious and/or fatal injury crashes, which are the number one cause of death on the Navajo Nation. Our 2018 Strategic Highway Safety Plan found that overturn/rollover vehicles and head-on collisions were largely caused by lane departures that could be avoided with structural improvements. We will systematically address these issues and expect to reduce crashes by at least 25% through the use of chevron warning signs, fluorescent curve signs, and edge line pavement markings.

The Strategic Highway Safety Plan provides an opportunity for the Nation to evaluate existing trends and processes, defines a Vision/Goals/Objectives for improving highway safety, identifies opportunities for Highway Safety improvement and defines roles and responsibilities to address strategies. From the data collected and analyzed, it was found that within the 15-year period; there were a total of 17,583 recorded crashes within the Navajo Nation, of that 7,480 are fatal and serious injury crashes. The 3 of the 7 highest crash areas comprise of: **41%** of all Fatal/Injury Crashes, **52%** of all Pedestrian Involved Crashes, and **60%** of all Intersection Related Crashes. It is the intent that collaboration amongst the Engineering, Education, Enforcement and Emergency Response Teams will work cohesively on strategies to improve safety for our Navajo People.

In January 2021 USDOT awarded NDOT a \$2 million "Better Utilizing Investments to Leverage Development" (BUILD) planning grant for a railroad spur from the I-40 BNSF railway corridor to stimulate economic development and job creation in our region and install vitally-needed infrastructure here on the Navajo Nation.

The following are detailed explanations of several successful examples.

Navajo Tribal Transportation Self-Governance Program

Our partnership with USDOT is enabling us to manifest self-governance in a capacity not previously available and creates the ability of NDOT to better manage Navajo transportation programs, services, functions, and activities. The following are several highlights of some of those projects:

Road and Bridge Improvements to Navajo Routes 27, 105 and 7:

- Approximately 10.9 miles of grading, paving, fencing, installation of culverts, cattle guards, retaining walls, gates, signs, striping, lighting, bridge repairs, and other miscellaneous road work.
- Cost: ~\$33M
- This project protects motorists, pedestrians, and livestock in Chinle, Arizona. Chinle is a city with ~5,000 residents, where millions of

tourists from around the world travel to see the beautiful landscape of what is known as *Canyon de Chelly*.

- Chinle is a regional hub with a Veterans Administration clinic, two Indian Health Service hospital facilities, a BIA office, the Chinle Chapter House, Navajo Judicial District Court, Apache County Justice Court, Navajo Police Department, shopping centers, hotels, two churches, and three schools.



View along Navajo Route 7 east of Chinle, AZ. Source: Google Earth, © Tudor ApMadoc

Road Construction of Navajo Routes 6331, 6330 and 21 in Kaibiito, AZ:

- Approximately 3.5 miles of paved road with retaining wall, rip rap, culverts, cattle guards, signage and solar lighting.
- Cost: ~\$15M
- This project provides a safe and modern road facility through the Kaibiito Chapter, is in Coconino County, ~36 miles east of Page, AZ, near Lake Powell.
- Kaibiito Chapter is home to the Kaibiito Boarding School, Shonto Preparatory School, a market, a chapter house (government community center), and 322 farms and ranches.



View through Kaibiito, AZ. Source: <https://kaibiito.navajochapters.org>

Road Construction of Navajo Routes 481 and 7119 in Littlewater, NM:

- Approximately 3.8 miles of road paving.
- Cost: ~\$3M
- This project was awarded a 2020 Engineering Excellence Award from the American Council of Engineering Companies on September 20, 2020.

Fencing Project along Navajo Route 15 near Cornfields Chapter in Arizona:

- Approximately 21.1 miles of fencing.
- Cost: ~\$2.2M
- This project promotes road and livestock safety to over 1600 residents who reside in nearby local farming communities.

Navajo Highway Safety Project

In January 2021 NDOT was awarded \$592,740 in FY 2020 Tribal Transportation Program Safety Funds to assess and improve Navajo Routes 15, 12, and 7 that have experienced some of the highest number of serious and fatal injury crashes within the Navajo Nation. The purpose of the project is to systematically address lane departure crashes along Navajo Routes 15, 12, and 7 by assessing and improving warning/delineation signage and pavement markings on curves that have lane departure crash causation characteristics. It is anticipated that more than 77 horizontal curves on these routes will have these low-cost and high-value crash countermeasures installed.

The expected outcome of this project is to provide crash reductions of at least 25% by use of chevron warning signs, 35% by use of fluorescent curve signs, and 37.7% by use of edge line pavement markings. Still, there is an enormous need at hundreds of other locations similar to these three routes for roadway safety improvements on the Navajo Nation, where motor vehicle injuries are a significant public health problem accounting for 10.6% of all deaths.⁶ The fatality rate for motor vehicle injuries on the Navajo Nation is 44.80/100,000 compared to 11.9/100,000 in the rest of the United States.⁷

Navajo BUILD Grant

In 2018, the Navajo Nation, 4 Corners Economic Development Incorporated (4CED) and San Juan County in New Mexico took on the challenge of diversifying our regional economy in the wake of ongoing coal-fired electric generating processing plant closures. We agreed that a railroad spur from the I-40 BNSF railway corridor to San Juan County is essential to stimulate economic development and job creation in our region and install vitally needed infrastructure on the Navajo Nation. To emphasize the importance of our partnership, a Memorandum of Understanding was established between the Navajo Nation and San Juan County in 2020. In January 2021 the USDOT awarded our coalition a \$2 million BUILD grant for planning. We look forward to the USDOT BUILD Team taking the developed plan and the Federal Railroad Administration converting this planning effort grant into a capital railroad project that is estimated to cost about \$200 million to create a transloading facility on the Navajo Nation which has estimated cost of \$350 million.

Transportation Challenges

Numerous challenges exist within the Navajo Nation impacting how we execute, implement, and operate our transportation system. They include:

Safety

As bad as vehicular injury and fatality rates are on the Navajo Nation, the suffering on Navajo roadways is underreported. The Navajo Nation's tri-state jurisdiction makes tracking and reporting crash data a challenge. Inaccurately low numbers undermine our ability to adequately access the Federal and state funding we need to mitigate crashes.

The problem is one of process. Arizona, New Mexico, and Utah each maintain their own records for motor vehicle crashes from crash reports submitted by municipal, tribal, county, or state police agencies. The Navajo Nation also maintains records of the same crashes across all three states. Coordination between police agencies, Navajo DOT, and state agencies in reporting and sharing crash records is often incomplete, causing many crashes to go unreported.

Significant differences, therefore, exist between the tribal and state databases of crash records. For example, the total count of car crashes within the Arizona section of the Navajo Nation from 2008 to 2012 varies by 3,160, or 46.35%.⁸

The Navajo Nation is working closely with the Arizona and New Mexico Departments of Transportation on a GIS data integration and analysis pilot study to improve the sharing of crash data that characterizes our roadway safety problem.

COVID-19

The *Diné Bahane*, or Navajo Creation Story, tells how Changing Woman created the original clans of the Navajo people and bore the Monster Slayer Twins who saved us from destruction by the *Naayéé*, or monsters. Today the Navajo Nation is facing a modern-day monster in the global pandemic related to the COVID-19 virus, which we call *Dikos Nitsaaígíí Náhást'éits 'áadah* or translated as Big Cough 19.



A Community Health Representative visits patients near Crownpoint, NM.

Source: Partners in Health – Cecille Joan Avila

The *Dikos Ntsaaígíí* reached the Navajo Nation nearly a year ago. Since then, we have lost over 1,200 tribal members, many of them beloved elders who are our connection to traditional *Diné* culture, stories, and language. At one point last year, the Nation had the highest per capita COVID-19 infection rate in the United States.⁹ Today, we are slowly, but successfully combating COVID-19 and our statistics are declining¹⁰. However, the total and far-reaching impacts of COVID-19 on the Nation are still unknown.

According to Johns Hopkins University, the Coronavirus infection rate on the Navajo Nation is over 2,304.41 per 100,000 people. By comparison, New York State has a rate of 1,806 cases per 100,000 people.¹¹ With the roll-out of the vaccines, the Navajo Nation is outpacing the vaccination rate of the rest of the country by getting 94% of the vaccines we have received into people's arms. The national vaccine rate is just 68% of vaccines received.¹²

COVID-19 continues to ravage Navajo families, in large part because of the Federal bureaucracy that has plagued Navajo Nation infrastructure development since long before

COVID-19 made hand washing a matter of life and death. Roughly 40% of Navajo families live without running water or basic sanitation¹³, 32% of Navajo homes lack electricity (comprising 75% of all un-electrified homes in the United States)¹⁴, and 96% of Navajo families do not have access to broadband.¹⁵

The Nation's roads are the crucial arteries patients must travel, up to 150 miles one way, just to access emergency services and basic health care. These are the same roads our public health teams and other first responders heroically traverse to deliver home health care, personal protection equipment, food, water, and education to help our families defeat *Dikos Nitsaaígíí Náhást'éits'áadah*. But we need to be able to do more than safely travel and drive upon these roads to defeat this disease. We need to be able run, walk, and cycle on these facilities safely so that we may each embark upon our own personal journey to good health. We must be physically strong enough to fight all the monsters that imperil *Diné* health at rates that far exceed national averages for other health "monsters" like diabetes, heart disease, obesity, addiction, and other chronic diseases.

The Nation's terrain varies from high desert to timberlands, so our roads can easily become impassable when snow or rain hits the area. Here on *Dinétah* all-weather access roads for vehicles, and sidewalks, pathways, and bike paths for pedestrians, are integral components of our overall strategy to improve *Diné* wellness, during this pandemic and beyond.

Red Tape or Bureaucratic Process

There is a saying on the Navajo Nation that, "*You can't move a shovel of dirt without triggering NEPA*," because of the way in which the [Navajo Regional Office \(NRO\) of the Bureau of Indian Affairs \(BIA\) in Gallup](#), New Mexico implements BIA policy intended to fulfill the Secretary's trust responsibility for tribal trust land. The result is a transportation system in which 88% of the roads, or 9,400 miles, have remained in the same condition today as they were in 1921 when the first Federal funded road was built.

The National Environmental Policy Act (NEPA) covers the areas of Environmental Assessments, Environmental Impact Statements, and Categorical Exclusions (CatEx). These areas were created to protect the environment and its resources. Federal interagency departmental differences undermine NEPA's effectiveness on the Navajo Nation. For example, NDOT is currently required to complete two environmental documents to address the Federal action of funding the project (as required by FHWA) and the Federal action of granting a right-of-way (ROW as required by BIA). NRO will not accept the FHWA CatEx document because NRO claims it does not comply with BIA formatting requirements.

[Section 25 of the Code of Federal Regulations \(CFR\) Part 170](#) states that the Secretary of the Interior gives the road system responsibility to the Secretary of Transportation and their agent, which on the Navajo Nation is NDOT. Through NDOT the Navajo Nation is completing its NEPA responsibility. However, the NRO's focus on form over function and on formatting documents over processing them, prevents NDOT from being able to

move beyond NEPA in a timely manner resulting in major delays for the Navajo Nation in completing projects. NRO's involvement in approval of a FHWA ROW application on the Navajo Nation often takes up to three years to get the project passed through red tape to final construction readiness.

Further complications arise around implementation of regulations to enforce the Clean Water Act. Any surface disturbance of one acre or more requires a Storm Water Pollution Prevention Plan. Any crossing of the Waters of the U.S. may require a 404 and 401 Certification. The US Army Corps of Engineers has authority over 404 permits while the [Navajo Nation Water Quality Program](#) has authority over the 401 Program. If NNEPA had the authority to grant and approve permits, we could potentially move projects along much faster.

The time and effort it takes for us to navigate duplicative and inconsistent administrative processes imposed by multiple Federal agencies further imperils the health and safety of our communities. Roads that remain unpaved and unmaintained contribute to increases in particulate matter (PM) levels that are harmful to our public health and environment. [The 2005 Navajo Nation Emissions Inventory](#) found that the main PM10 and PM2.5 emission sources are wildfires, prescribed fires, residential wood combustion, paved road dust, and unpaved road dust. The Southwest Indian Health Services region reports the highest rates for asthma hospitalizations among the six Indian Health Services regions (10.0 per 10,000 population; range, 1.8–10.1 per 10,000 population).¹⁶ Paving roads is key to reducing PM levels and reducing red tape is key to paving roads.

Bennett Freeze

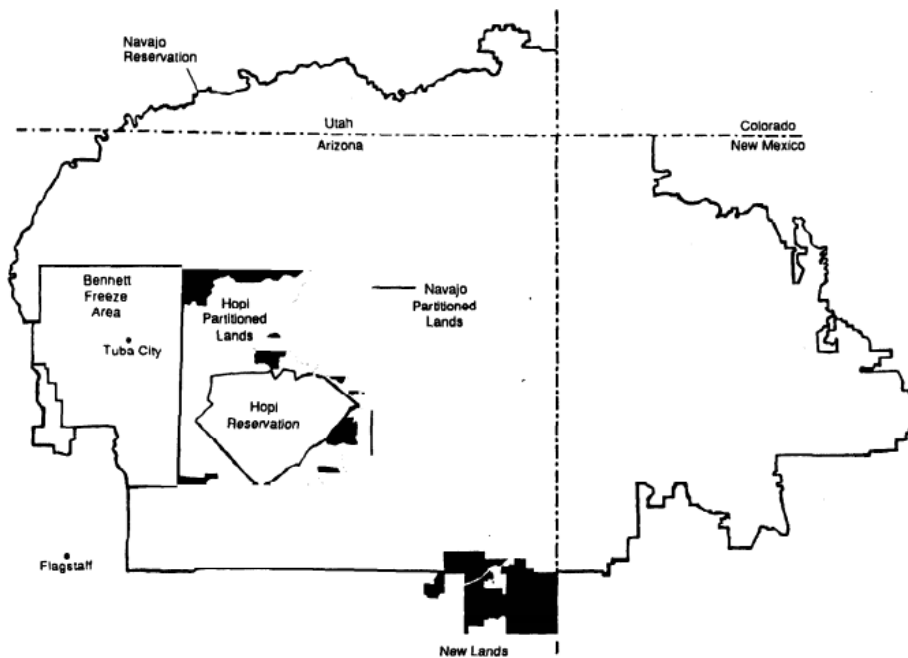
In 1966 the Federal government ordered a development ban on 1.5 million acres of Navajo lands as part of the largest forced relocation of American citizens since the internment of Japanese Americans during WWII.¹⁷ This moratorium was named for the Commissioner of Indian Affairs at the time, Robert L. Bennett, and lasted 40 years until 2006. This “freeze” prohibited Navajos from fixing their own roofs, much less repairing roads.

The Bennett Freeze is a national tragedy that remains invisible to most Americans, even though it continues to play out just 50 miles from the Grand Canyon, where six million people visit each year. Approximately 20,000 *Diné* live in the formerly frozen area and continue to suffer its effects.

Although a 2008 study identified the impact of the Freeze and prescribed necessary Federal investments to mitigate its damage, nearly nothing has been done, effectively extending the Freeze into its 55th year, currently. The nine Navajo Nation chapters located in the Former Bennett Freeze are:

- Bodaway Gap Chapter
- Cameron Chapter
- Tolani Lake Chapter
- Tonalea Red Lake Chapter

- Coalmine Canyon Chapter
- Coppermine Chapter
- Tuba City Chapter
- Kaibeto Chapter
- Leupp Chapter



Map of Former Bennett Freeze Area located west of Hopi Reservation along the western Navajo Border.

Source: <https://ceias.nau.edu/capsonte/projects/CENE/2014>

As a consequence of the Federal government not only denying, but prohibiting infrastructure investment in this region for nearly three generations, Navajo families are still hauling water hundreds of miles multiple times per week. This usually takes place on unsafe dirt roads that are reminiscent of wagon routes and paved roads that have not been maintained since Lyndon Johnson was President.

But now, after 12 years of diligent community effort, the Navajo Nation has developed a strategic plan called the [Navajo Thaw Regional Recovery Plan](#) that is designed to undo the damage the Federal government has wrought. It is the vision of the Navajo Thaw Plan to build our new highways that better connect this region to public health, education, and safety, while contributing to the economic development of the Western Agency on the Navajo Nation.



Volunteers hauling water to families in need on the Navajo Nation.

Source: Water Warriors United, <https://tucson.com>

Without Federal regulatory reform, the path forward will be littered with red tape and remain slow, precisely and ironically, because the Federal government does not trust that the Navajo Nation can protect Navajo land better than the agency that caused this conundrum.

Civil Rights

Navajo students have the same right to get an education as do other students in Arizona, Utah, and New Mexico. Rules, policies, or practices that deny our children that right, violate their constitutional rights under the 14th amendment. This was the holding in *Meyers v. Bd. of Education*¹⁸, the seminal 1994 civil rights case that was born in the community of Navajo Mountain and is the equivalent of *Brown v. Board of Education* in Indian Country, delivering the equal treatment promise of *Brown* to American Indian students.

The *Naatsis'áán* Chapter is one of the most remote areas of the Navajo Nation, located in Utah just over the Arizona border between Lake Powell to the north, the 10,388-foot tall Navajo Mountain to the west, and the impassable Paiute mesa to the east. Before *Meyers*, students from the *Naatsis'áán* Chapter had to travel 180 miles to Blanding, Utah in school buses that struggled to traverse the first 20 miles of Navajo Route 16, a dirt road that is a Federal facility on the BIA's road inventory that was alternately rutted, wash-boarded or mud-bogged, and strewn with boulders and switch-backing without guardrails before finally reaching pavement. The Federal court held that requiring Navajo children to travel four hours in each direction to get to school was tantamount to denying them the constitutional promise of equal access to education that *Brown* makes to every child in America.

The court ruled that Utah's San Juan County School District had a duty to build a high school in the Navajo Mountain community of the *Naatsis'áán* Chapter and that the BIA had a duty to improve Navajo Route 16 to support the delivery of education.¹⁹

This historic ruling forced the Federal government to pave Navajo Route 16 for families residing in the *Naatsis'áán* Chapter community (a project that took until 2015 to complete).

All US citizens have a constitutional right to go to school and the Federal government has a duty to build and maintain the roads necessary to get them there.



Stuck bus along a muddy roadside ditch in the San Juan School District.

Source: Indian Country Today, Alysa Landry

Unfortunately, this is a right that is violated daily when our students spend as much time on a school bus as they do in class because their busses cannot traverse the dirt roads that are on BIA's inventory and the Federal government fails to reasonably maintain or improve our roads. For years, Navajo Region BIA's answer to addressing these issues has been:

- The BIA defines "maintenance" so narrowly that graveling a dirt road is considered "construction," making blading a road the only option, even though blading dirt roads provides a temporary benefit, but permanently channelizes the road below its surrounding surface, creating a gully and sometimes even exposing archaeological properties.
- The BIA insists that adding gravel to an existing road, or using a shovel to create crowns and culverts within an already disturbed area, triggers the full panoply of the NEPA process; and
- Funding levels for the Navajo transportation system are so low that it is only possible to construct 16 miles of new pavement per year, even though 9,000

miles of roads need attention because they are crumbling, cracked, muddy, slick, steep, rocky, potholed, flooded, and often impassable.

Opportunity Costs and Economics

The Navajo Nation has designated 17 economic opportunity zones to foster diversified sustainable economies in our local communities and throughout the region, but Federal policies that control Navajo roads repel investment. The threshold question interested investors always pose is about our infrastructure, “*Can we provide access to paved roads?*” Their business-risk formulas cannot tolerate what we live with every day.

Federal policies that have stymied development on the Navajo Nation are not only chasing away non-Navajos, they chase away our own children who move off *Dinétah* in search of opportunities that are not available here. We need economic development to fully manifest our own self-determination and to enable our future generations to achieve self-reliance and self-sufficiency right here at home. We estimate that our border town of Gallup, New Mexico raises about \$2 billion in revenue each year. Ninety percent of those revenues comes from *Diné* who travel off reservation to access goods and services for everything from camper shells to cancer treatment. The Navajo Nation needs to be able to keep those revenues here on *Dinétah*.

In order to attack persistent poverty on the Navajo Nation, and to achieve well-being and reduce dependency within our own borders, we need the Federal government to help, not hinder our efforts to improve our transportation system, especially in the wake of the closures of coal-fired plants that, though problematic, provided high-paying jobs. So far, 2,200 *Diné* have already lost their jobs due to the shuttering of the fossil fuel industry on and around the Navajo Nation and we anticipate the closure of five more coal fire plants in the next few years.

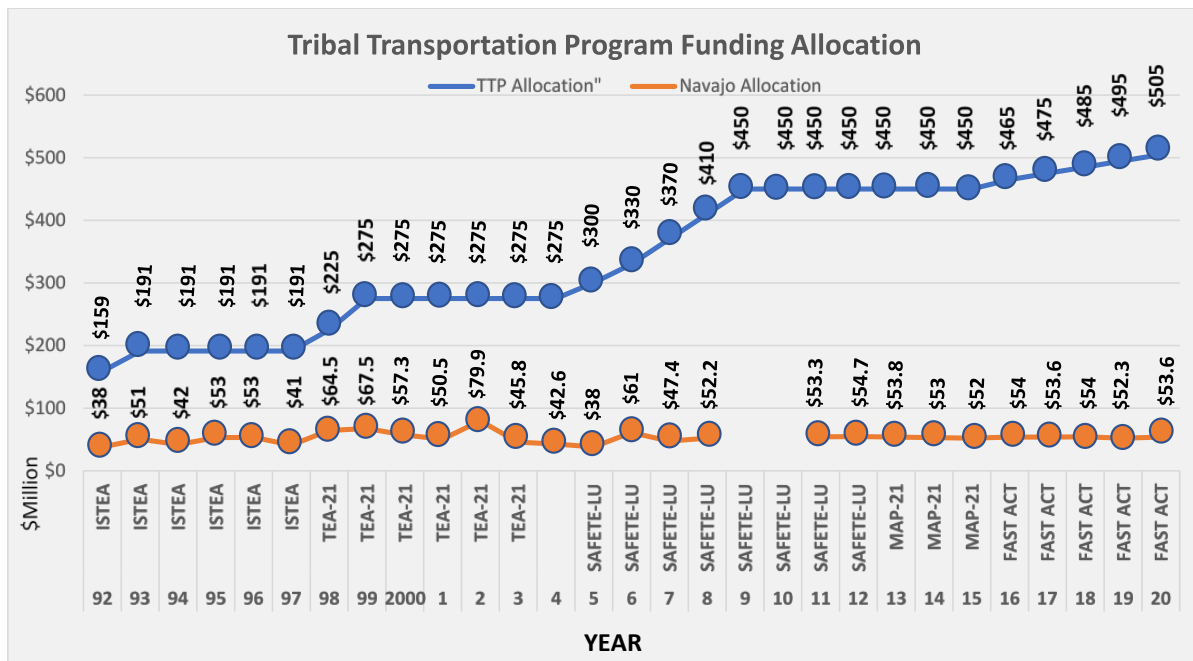
Tourism is a big component of the *Navajo Nation Comprehensive Economic Development Strategy*.²⁰ The growth of that industry here on *Dinétah* will require us to be able to make the road improvements necessary to build out a tourism corridor that we call the Navajo Grand Circle. Too many tourism operators currently launch trips from Las Vegas that orbit the Navajo Nation, but do not actually stop here, so we miss out on the opportunity for them to spend money at our shops, restaurants, hotels, and sites of interest. The Navajo Grand Circle will require roads that can provide safe passage for tourists from point to point: from Las Vegas to Page to Monument Valley to Shiprock to Crown Point to Hopi to Tuba City to the Grand Canyon, then back to Las Vegas.

These are roads that have carried cargo, commerce, and correspondence. They are the same roads that once carried the uranium that the United States said was necessary to protect all of our freedoms. But today these roads need to carry the dreams of the Navajo Nation and for that, we need Federal policies that support the emergence of a Navajo road transportation system built for the 21st century.

Tribal Transportation Program (TTP) Funding Formula

When the Tribal Transportation Program (TTP) funding formula was modified in the last three Federal highway bills, the political thrust behind each of those bills along with the modifications to the TTP program resulted in an inequitable and disproportionate allocation of funds. For example, all tribes must now compete for a 3% set aside of annual TTP funds for bridge grants. Another downside to the TTP program is the inclusion of state and county roads. For several Tribes including the Navajo Nation, state or county roads are *not included* in their roads inventory. In comparison, Tribes who *include* state and county roads not on tribal trust land or proposed road miles for non-roads, unfairly receive larger amounts of funding under the TTP for the additional road miles they include in their inventory. This results in subsidizing those roads instead of on-reservation, tribal roads.

In 2002, before passage of the Federal highway bill known as SAFETEA-LU, the Navajo Nation received \$79.91 million in Indian Reservation Road funds. Two years later, after passage of SAFETEA-LU, the Navajo Nation lost 52.45% of its tribal transportation funding, receiving only \$38 million. Since then, our annual transportation funding increased incrementally, but it has plateaued at \$53 million for the past decade. Today, we receive the same amount of funding we received in 1995, the only difference being that back then our share represented more than 27.7% of the national annual tribal transportation fund while our portion today represents just 10.6%.



Abbreviations Key:

ISTEA – Intermodal Surface Transportation Efficiency Act

TEA-21- Transportation Equity Act for the 21st Century

SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

MAP-21 – Moving Ahead for Progress in the 21st Century Act

FAST ACT – Fixing America’s Surface Transportation Act

This chart illustrates the funding allocation of the overall Tribal Transportation Program (TTP) and the Navajo allocation from 1992 to 2020. The TTP allocation is primarily based on the formula-based funding. Since **2016**, the overall TTP funding allocation has increased by \$10 million each year, but the Navajo allocation has stagnated at an average of \$54 million a year. The increased in TTP funding does not truly benefit the Navajo Nation and other large land-based tribes. If the formula remains the unchanged, Navajo will continue to be at its current funding level.

The funding formula that SAFETEA-LU ushered in and subsequent Federal highway bills have reaffirmed:

1. Various Tribes have chosen to expend their Federal highway funds, originally intended for BIA and Tribal inventoried routes, on-state and county roads that are not located on tribal trust land, thereby using limited tribal transportation funds for non-tribal transportation roads that already receive highway trust fund apportionments from other sources and have their own local property tax revenues to pay for roads; and
2. Populates the National Tribal Transportation Facility Inventory with proposed road miles and for non-roads, i.e. canoe routes across open ocean, walking paths through the woods, and dog sled trails.

Despite the resultant funding decreases to the Navajo Nation, the Navajo DOT has developed a Long-Range Transportation Plan (LRTP) to make every effort to implements these seven goals:

- Maintaining the current transportation system;
- Enhancing existing partnerships with pertinent agencies;
- Maximizing the effectiveness of transportation investments;
- Enhancing safety;
- Creating and strengthening connections;
- Providing transportation options;
- Providing economic growth.

The LRTP has identified a total of \$1.4 billion in funding needs to address the current pavement deficiencies of the Navajo Nation. The Plan also identifies an additional \$6.5 billion for upgrades to the current roadway system, which includes earth, gravel, and paved roads.

There are 179 bridges, or *na'ni'a*, that also present a transportation challenge to the Navajo Nation. We need \$30 million to repair or reconstruct 10 of our most structurally deficient *na'ni'a*, some of which comprise components of major school bus routes. Unfortunately, MAP-21 eliminated the stand alone national tribal bridge program that once provided \$14 million per year. Today 574 tribes must now compete for annual bridge grants that are

little more than skinny slices from the crumb pie that is the 4% tribal bridge set aside from annual TTP funds.

It is a recipe for disaster. The BIA told Congress in 2015, “the requirement of the Secretaries of Transportation and Interior to perform safety inspections on all 930 tribally-owned bridges has not been adequately funded. The number of bridges which are deficient or functionally obsolete and are eligible for replacement or rehabilitation for BIA bridges alone in the 2013 National Bridge Inventory is approximately 178 of 930 (or 19.1% of the total). The estimated cost of replacing and rehabilitating these bridges is \$53.2 million. The estimated cost of inspecting the tribally-owned bridges along with the BIA is \$3.0 million every other year.”²¹

Navajo Nation has received just \$5.1 million for bridge maintenance and construction in the past three years. We face a total transportation need of \$7.9 billion. At the current rate of spending, it will take 116 years to meet the Navajo Nation’s transportation needs.

Funding Flexibility

The BIA Road Maintenance Program is funded by the Department of Interior through annual Tribal Priority Allocations (TPA). The premise of TPA is that the funds are dedicated to activities pursuant to the priorities that tribes identify. NRO receives about \$7 million annually to maintain roads on the Navajo Nation. Unfortunately, BIA is reluctant to expend these funds on Navajo tribal roads but instead primarily uses these funds on BIA roads.

This prohibition is not based in law but is instead an expression of agency discretion. Unfortunately, the effect of the NRO’s position undermines the very purpose of TPA, which is to invest in tribal priorities, not agency priorities. The inflexibility of NRO’s position also makes it impossible to respond on the ground in real time to the most pressing maintenance needs if those needs happen to be on tribal roads.

Navajo Nation Requests with Proposed Solutions

In order to eliminate the barriers to improving and building the Nation's transportation system, the Nation requests the Federal government take immediate action as described below:

Request One: Resolve conflicts in agency authority and jurisdictions in-order to protect our people, the environment, and cultural resources.

Discussion: Civil rights legislation, the Individuals with Disabilities Education Act (PL 108-446) and the Americans with Disabilities Act (PL 110-35), require that Federal, state and local governments provide equal access to education and provide the infrastructure needed to support the delivery of those educational services. Unfortunately, the manner in which NRO implements NEPA and the historic preservation statutes on the Navajo Nation violates the civil rights of Navajo people, especially students. According to the Government Accountability Office, Navajo students miss up to 12 days of school per year due to weather induced road closures. BIA's insistence that performing any activities beyond blading, triggers the full panoply of the Federal regulatory regime is a barrier to *Diné* people being able to access education, health care, public safety, and commerce and it violates Federal laws intended to protect their rights to those services. Additionally, BIA's narrow interpretation of environmental and cultural protection statutes endangers the very environment and archaeological resources those Federal laws are intended to protect.

Proposed Solution: We need a categorical exclusion (NEPA CatEX), empowered through our Navajo Nation Environmental Protection Agency, that applies to all roads within the Navajo Nation, regardless of whose inventory they are on or which source of funding is being used to pay for road construction or maintenance activities.

Request Two: Harmonize Agency Guidance with Law to make *Diné* roads safe.

Discussion: BIA's definition of maintenance, especially for dirt roads, is not anchored in law, policy, or professional engineering standards. It is merely a questionable interpretation of guidance that results in the continual degradation of roads on the Navajo Nation. "[82 Indian Affairs Manual, BIA Transportation Facilities Maintenance Handbook for BIA Road Maintenance Program](#)" (82 IAM) does not define "maintenance" or "improvement" in its long list of definitions. The manual does not even provide a list of permissible dirt road maintenance activities. Instead, 82 IAM merely suggests a schedule:

"Depending on fund availability, it is recommended that BIA public improved and unimproved roads should be maintained a minimum of 2 times per year, one maintenance cycle per 6 months. School bus routes should be given priority over other earth roads. Depending on fund availability, school bus routes should be maintained a minimum of 4

times per year, one maintenance cycle each quarter. Snow plowing is considered emergency maintenance required to keep the roads passable.” P. 8.

This interpretation of maintenance means that routine road maintenance that happens everywhere else cannot happen here, which is why our roads are persistently impassable and unsafe. An appendix to 82 IAM provides instructions for blading and notes:

“Grading the road with a motor-grader is the primary type of maintenance for dirt roads... In dry weather, traffic compacts the surface of dirt roads which often results in a hard surface crust. Dry grading a road when it has this hard surface crust is not effective... If the operator smooths the road without breaking the crust, any work he does will be ruined almost immediately by the wind or traffic. The work is only cosmetic; it may satisfy the public but is not productive beyond providing good public relations.” P. 268

It is important to note that a “primary” type of maintenance is not an “exclusive” type of maintenance. Blading may be a “primary” type of dirt road maintenance simply due to lack of available funds. In 82 IAM, the BIA cites neither reasoned policy nor legal authority to prohibit the use of BIA road maintenance funds to crown or gravel dirt roads. Further, 23 USC§101(a)(13) defines road maintenance: “The term ‘maintenance’ means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.”

The Appendix to Subpart G of 25 CFR Part 170 provides a List of Eligible Maintenance Activities Under the Tribal Transportation Program. It characterizes the kinds of activities tribes may spend up to 25% of their own TTP funds on. This 27-point list is an example of the flexible range of options needed to properly maintain tribal roads for the safety of the traveling public.

Proposed Solution: We need the U.S. Department of Transportation, the Department of the Interior, and Congress, to come to an agreement about the definition of road maintenance and apply it uniformly, regardless of the location of the road or the source of its funding.

Request Three: Provide flexibility to the Tribal Priority Allocations (TPA) that BIA uses for road maintenance so that TPA funds may also be used to fund tribal roads.

Discussion: While the BIA encourages flexible use of road construction funds for even non-BIA and non-tribal roads, characterizing tribal road fund subsidies for state and county roads as leveraging resources for regional economic benefit, the BIA takes a very different approach to expenditures of TPA for road maintenance. The BIA refuses to expend such funds for road maintenance on anything but BIA roads, regardless of tribal priorities or road safety exigencies. The position of the agency essentially erases the opportunity for tribes to prioritize the use of Tribal Priority Allocations.

Proposed Solution: We need Congress and the Secretary of Interior to direct the BIA to allow TPA funds to be used to maintain tribal roads upon a tribe's request.

Request Four: Ensure agency practice is consistent with policy to make the Navajo road system equitable.

Discussion: Navajo students sometimes spend more time on a school bus than in a classroom, not only because of the BIA's punishing application of Federal environmental and archaeological laws, and the Agency's circuitous definition of road maintenance, but also because of Secretarial oversight that deprives the Navajo Nation of the ability to utilize its own gravel to make Navajo dirt roads safe and accessible in any weather. A recent project in our Indian Wells Chapter took four years just to get a favorable approval for a gravel pit. Currently NDOT is following up on a list of BIA and BLM additional requirements for eventual and full approval. We actually ended up having to purchase a gravel pit just to make the project possible. Our inability to access our own borrow sites creates one of the greatest costs to Navajo road projects because gravel must be hauled from off-reservation, despite its availability here. There are at least two precedents of Secretarial approval of gravel mining on Navajo trust land: 1) to build a casino parking lot, and 2) to build an alternative emergency route when U.S. 89 was closed due to a land slide. The logic in both instances was that the Navajo Nation should be able to access its own gravel for its own purposes.

Proposed Solution: We need this policy spelled out by both the U.S. Departments of Transportation and Interior and implemented consistently.

Request Five: Protect the integrity of tribal road funds, so that they do not subsidize non-tribal roads.

Discussion: Navajo students, patients, employees, and emergency responders who cannot get to where they are going because they are stranded on inaccessible roads are the victims of a cynical tribal road funding formula muscled through Congress by entities that have no tribal roads. BIA Secretaries have lauded the fact that tribes are continuing to invest in transportation projects that are the responsibility of other government authorities, characterizing what is taken from American Indians as leveraging regional economic development (please see BIA Assistant Secretary Michael Black's testimony at the 2014 Senate Committee on Indian Affairs hearing). In 2014, when the total Tribal Transportation Program (TTP) funds for 566 tribes was just \$450 million, BIA approved \$270 million in TTP to be invested in non-BIA and non-tribal transportation projects

Agency rules that allow tribes without roads to include, without data, proposed ghost roads merely to game the system to increase their formula funded share have real life and death

consequences for the Navajo Nation and other large land-based tribes. Today our public health nurses are struggling to reach COVID-19 patients in communities with higher Coronavirus rates than other parts of the United States where infrastructure doesn't factor into the fight against the virus. But this is a struggle that the tribal formula fund and its proponents have turned a blind eye to for a long time.

In 2017, school bus driver Marilyn Benally, who has driven a school bus in the shadow of Monument Valley for 21 years shared with *Indian Country Today* that, "When it's dry, the roads turn into washboards or sand traps. When there's snow or rain, it's muddy. Roads aren't passable." The unwritten rules of her job are, "If the bus gets stuck in snow, ice, sand, mud, or standing water, don't spin the tires. Set the brake, call for help, and keep the engine running. And never, under any circumstances, allow students to get off the bus and push." By way of example, she and her colleagues recounted a typical event when a school bus slid off the road after sunset at about 7:30 p.m. and slid off the embankment only to then be hit by an oncoming car. As the driver waited for help to arrive, she sent the remaining students home by foot. Maintenance crews arrived 90 minutes later, but eventually called off the rescue until the following morning.

Proposed Solution: We need the U.S. Department of Transportation to: 1) redefine, for the purpose of the National Tribal Transportation Facility Inventory (NTTFI), the definition of "roads" to access routes for vehicular ground surface traffic (explicitly excluding walking paths, dog mush routes, and canoe trails; 2) require all proposed roads included within NTTFI to be supported by data, both going forward and retroactively; and 3) Prohibit Tribal Transportation Program funds from being invested in non-BIA or non-tribal road projects.

Request Six: Recognize that tribal bridges and roads present different exigencies of circumstance that require complimentary, not competitive, funding sources.

Discussion: MAP-21 eliminated the stand-alone tribal bridge program that TEA-21 authorized as part of an overall effort to eliminate and consolidate small programs, but little if any thought was given to how it would impact the 574 tribes who otherwise have no dedicated source of funding to rehabilitate or construct bridges on Federal trust land. The bridge set-asides unreasonably pit road projects against bridge projects and tribe against tribe. The current situation is as financially unsustainable as many of our bridges are structurally unstable.

Proposed Solution: We need the U.S. Department of Transportation and Dept. of Interior to prioritize the reauthorization of a standalone tribal bridge program that is funded at a level that takes the safety of Federal facilities and Federal trustees seriously.

Request Seven: Promote tribal sovereignty by retroceding Secretarial approval over tribes who have demonstrated their own capacity for Federal regulatory compliance.

Discussion: The Federal trust responsibility is intended to protect the resources, lifeways, and culture of trustees on Federal Indian trust lands. The [Indian Self-Determination and Education Assistance Act](#) recognizes the inherent right of tribes to govern themselves. Taken together, these fundamental tenets of Federal Indian law argue for tribal autonomy, when possible, to administer their own regulatory regimes that meet the Federal floor, so that they might find their own ceiling. This is the same autonomy allowed states and territories without Secretarial oversight.

For too long, Secretarial oversight has been construed to mean Secretarial interference of tribal authority, which is merely a carryover from colonialism that does not recognize the competency of tribes to take care of themselves and their environment. It results in duplicative tangles of red tape that drive up project costs and protract their schedules.

As mentioned earlier, NDOT is currently required to complete two environmental documents to address the Federal action of funding the project (required by FHWA) and the Federal action of granting a right-of-way (required by BIA). NRO will not accept the FHWA CatEx document because it is not considered to be in a BIA format. However, the FHWA CatEx is an acceptable document to complete the NEPA process. Such bureaucratic paternalism is hindering—not protecting—American Indian Trustees on Federal Indian trust lands and undermining Congress’ decades long efforts to promote tribal self-determination.

Proposed Solution: We need the Secretary of Transportation and Secretary of Interior to retrocede their authority over tribal roads in cases where tribal governments, like the Navajo Nation, have already assumed treatment as a state from U.S. EPA.

CONCLUSION

All across the country, the road network is key to promoting thriving and resilient communities where residents can feel safe, access healthcare and education, develop businesses, participate in recreation, culture, and religious activities; and contribute to the economic wellbeing of the country as a whole.

In order to spur economic development, develop homesteads, and draw visitors to *Dinétah*, we need a robust, efficient, and safe transportation system. This is fundamental and essential to our survival, keeping our culture, and continuing our way of life. We need the Federal government to remove barriers and support nation building on tribal lands. It is frustrating to have to obtain permission when the Navajo Nation engages in any earth moving activities. We need fair and common-sense policies that honor our treaties and inherent sovereignty. We welcome Federal partnerships whose terms are commensurate with a government-to-government relationship.

From the time of emergence, our *Diyin Diné* entrusted us with preserving the pristine quality of the environment on our sacred lands. This meant that we were entrusted with maintaining harmony and balance with all living beings, as well as the environment we live in. It is through this balance that, We, as *Diné* people, have our own sense of wholeness and can promote a state of harmony.

We are the children of Mother Earth, a sovereign Nation within the Four Sacred Mountains. Each of us is anchored by kinship, traditional teachings, and natural laws. We understand and embrace the task of protecting our *tó* (water) and *nilch'i* (air) across *Dinétah* for *Si'ah Naaghai Bik'ei Hózhó* (balance and harmony) for all beings.

In order to be successful in keeping and restoring the harmony in meeting our transportation needs, our Federal partners must support, not supplant, our decision-making authority so that our Division of Transportation, Environmental Protection Agency, Division of Economic Development, and our other Divisions, Offices, and Agencies can continue to achieve great success for people, on our own land.

Ahéhee', thank you.

#####

References:

- ¹ <https://www.fhwa.dot.gov/interstate/history.cfm>
- ² South Carolina is the 40th largest state by total area with 32,020 sq mi and West Virginia is 41st with 24,230 sq mi. See <https://www.census.gov/geographies/reference-files/2010/geo/state-area.html>
- ³ <https://www.epa.gov/navajo-nation-uranium-cleanup/abandoned-mines-cleanup>
- ⁴ <https://militarybenefits.info/navajo-code-talkers-day/>
- ⁵ <https://indiancountrytoday.com/archive/by-the-numbers-a-look-at-native-enlistment-during-the-major-wars?redir=1>
- ⁶ https://www.nec.navajo-nsn.gov/Portals/0/Reports/Navajo%20Fatal%20Car%20Crashes%20Report%202005-2014_opt.pdf, p. 1
- ⁷ Kochanek KD, Murphy SL, Xu JQ, Tejada-Vera B. Deaths: Final data for 2014. National vital statistics reports; vol 65 no 4. Hyattsville, MD: National Center for Health Statistics. 2016.
- ⁸ <https://www.azrts.org/2018-docs/azrts-pres.pdf>
- ⁹ <https://www.cnn.com/2020/05/18/us/navajo-nation-infection-rate-trnd/index.html>
- ¹⁰ <https://www.ndoh.navajo-nsn.gov/COVID-19>
- ¹¹ <https://www.cnn.com/2020/05/18/us/navajo-nation-infection-rate-trnd/index.html>
- ¹² <https://www.aljazeera.com/news/2021/2/9/navajo-nation-to-receive-29k-more-vaccines-has-used-94-percent>
- ¹³ <https://www.pbs.org/newshour/show/how-off-the-grid-navajo-residents-are-getting-running-water>
- ¹⁴ <https://www.publicpower.org/LightUpNavajo>
- ¹⁵ <https://www.ntia.doc.gov/blog/2014/narrowing-digital-divide-navajo-nation>
- ¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207133/>
- ¹⁷ "Unraveling the Anchoring Chord, Navajo Relocations 1974 to 1996", Maureen Trudelle Schwartz for the University of Washington, Published in the American Anthropologist, Vol 99 No. 1
- ¹⁸ Meyers v. Bd. of Educ., 905 F. Supp. 1544 (D. Utah 1995).
- ¹⁹ *Ibid.*
- ²⁰ Comprehensive Economic Development Strategy, April 2018. https://advancedbusinessmatch.com/wp-content/uploads/2018/07/NNDED_CEDS_FINAL_041618-LOW-RES.pdf (last visited March 4, 2021).
- ²¹ <https://www.indian.senate.gov/sites/default/files/upload/files/4.22.2015%20SCIA%20Witness%20Testimony%20-%20Mike%20Black.pdf>